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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 695

UNITED STATES OF AMERICA,
Appellant,

v.

CONGRESS OF INDUSTRIAL ORGANIZATIONS,
PHILIP MURRAY, officer thereof,
Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION AS *AMICUS CURIAE*

AMERICAN CIVIL LIBERTIES UNION,
Amicus Curiae.

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BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION AS *AMICUS CURIAE*

The American Civil Liberties Union, which is devoted to the furtherance of the civil rights guaranteed by the Constitution of the United States, submits this brief urging that §313 of the Federal Corrupt Practices Act, as amended by §304 of the Labor Management Relations Act

of 1947, abridges "the freedom of speech" and "of the press" of appellees, which is protected by the First Amendment to the Constitution of the United States and denies to appellees the "due process of law" guaranteed by the Fifth Amendment to the Constitution of the United States.

The Facts

Appellees were indicted under §313 of the Federal Corrupt Practices Act, as amended by §304 of the Labor Management Relations Act of 1947, providing in pertinent part that "It is unlawful for * * * any labor organization to make a contribution or expenditure in connection with any election" to Federal office or "in connection with any primary election or political convention or caucus held to select candidates" for such office, and providing penalties for any labor organization violating the section and for any "officer of any labor organization, who consents to any contribution or expenditure by the * * * labor organization" in violation of the section. The section defines a "labor organization" as "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

The indictment charged in Count I that respondent Congress of Industrial Organizations (herein called the "CIO") was, within the meaning of the statute, a labor organization, of which appellee Philip Murray was an officer, to wit, President; that on July 15, 1947, 1947 a special election, at which a Representative to Congress

was voted for, was held in the Third Congressional District of Maryland; that in anticipation of that election and with intent to violate the statute, the CIO published an issue of its weekly periodical, The CIO News, under date of July 14, 1947, containing an article by appellee Murray urging members of the CIO to vote for a particular candidate "officially approved and endorsed by the CIO Political Action Committee for the State of Maryland", rather than the other candidate, said to be "notorious among the working men and women of Baltimore for his anti-union views and activities"; that the CIO violated the statute by expending out of its funds, in connection with the election, a substantial sum in the composition printing, publication, and distribution of the July 14, 1947 issue of The CIO News, a substantial part of which sum was expended to publish the offending article; that the CIO also expended its funds in printing and causing to be transported to Maryland one thousand extra copies of the July 14, 1947 issue of The CIO News. Count II charged that appellee Murray, in violation of the statute, consented to the aforementioned expenditures.

Appellees moved to dismiss the indictment on the ground that the statute violated the First, Fifth, Sixth, Ninth and Tenth Amendments to the Constitution of the United States. The District Court (Moore, D. J.) granted the motion, on the ground that the statute was "an unconstitutional abridgment of freedom of speech, freedom of the press and freedom of assembly" protected by the First Amendment. The case is before this Court on direct appeal.

POINT I

As applied to appellees the statute violates the First Amendment.

The First Amendment to the Constitution of the United States provides in relevant part: "Congress shall make no law • • • abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." By §313 of the Federal Corrupt Practices Act, as amended by §304 of the Labor Management Relations Act of 1947, Congress has made a law which has been applied to prohibit the CIO from making the necessary expenditures to print an article in favor of a particular candidate for Federal elective office. Congress has thus, if the statute be valid, not merely abridged but has effectually prohibited the power of speaking and printing which the CIO as an entity previously exercised in favor of certain candidates for Federal elective office and against others.

The argument advanced by the Congress and by the Government to justify this restraint may be summarized as follows: They contend that the entity, which is a labor organization, is composed of a majority and a minority. The majority are thought to have joined for at least two purposes, economic and political, the latter including the making of speeches and printing of articles in favor of particular candidates for federal office. The minority are thought to have joined solely for economic ends, under a greater or lesser degree of economic "coercion", and are opposed to the making of speeches or printing of articles by the group as a whole in favor of candidates approved by the majority. Senator Taft in 93 Cong. Rec. 6437,

6440. They are assumed to be so opposed either because of a detached philosophical aversion to the mixture of economic and political ends in a labor organization or because they estimate that the candidates which will be supported by the majority will, in general, pursue policies with which the minority does not agree. Senate Report No. 101, p. 24. It is claimed that Congress could prevent the expenditure of the minority's money for the making of speeches and the printing of articles in favor of candidates with whom the minority is not in sympathy, by requiring the majority to divorce their economic activities from their political speaking and printing activities, and to form two separate associations for each. Senator Taft in 93 Cong. Rec. 6436-6440.

The character of the restraint upon the speech and press of the majority is plain. The majority wish to make one combination for at least two purposes, economic and political, the latter to include speaking and printing. Congress has declared that the majority may not combine for those two purposes, but must set up a separate organization for each. To the extent that it is more expensive and more burdensome to the majority to speak and print through an organization separate from that through which they desire to speak and print, as well as to act in the economic sphere, there is a restraint on their speech and press.

That restraint is not small. Organization, even of persons with common goals, is not easy or cheap, as the entire history of the American labor movement has demonstrated. The time, effort, and expense necessary for the majority to create and sustain a separate organization for political activities would obviously be substantial.

In assessing the interest of a minority in a labor organization to join a labor group which does not perform activities of speech and press in connection with Federal elections, it is important to determine who constitute the minority which Congress sought to protect. Not all those in a labor organization who may be opposed to the particular candidate supported by the organization are to be included in that minority. Congress has not prohibited persons from joining and contributing to organizations devoted to the support by speech or press of particular candidates, even though a minority may be opposed to the candidate chosen by the majority. Congress has not as yet thought it desirable to outlaw all political organizations or all political parties. It has not as yet supposed that persons may not combine solely for the purpose of making their speech and press effective and may not contribute money to the support of the group even though that money may be expended on behalf of a particular candidate with whose views they do not agree. Congress has, so far, not prohibited an individual from paying that price in return for a voice in the selection of the policies of the group and for the opportunity to make his speech and press effective when it is in agreement with a majority of the group.

Thus the minority in a labor organization which Congress supposed itself to be protecting does not include those who believe in combination with their fellow laborers for the purpose of political speech, even though many of those who have such a belief may be opposed to the particular candidate supported by the labor organization. The minority with which Congress was concerned can include only those who, although for one reason or another they believe in economic combination, do not believe in the

political organization of their fellow workers, either as a matter of theory or because they judge that the candidates which will be supported by the group will be unresponsive to their problems. It is the payment of the money of this group and not of all those opposed to the particular candidate supported by the majority which Congress sought to stop.

This minority are not prohibited from voicing their political views by reason of having joined for economic purposes a group the majority of which advocates contrary views. It is true that the effective presentation of the minority's political thoughts may be lessened to the extent that they desire to organize to express them but are unable to do so because of lack of that proportion of their union dues which have been allocated to the political speech and press activities of their labor organization. But it must also be noted that they have a voice in the labor organization as to which candidate should be supported. As stated by Brandeis, J., in *Whitney* v. *California,* 274 U. S. 357, 375, their "fitting remedy for evil counsels is good ones."

The issue under this point is thus whether Congress may place burdens upon the political speech and press of a majority of those in a labor organization in order to save a minority money which in large part they will not expend for the purpose of speech or press. In this case, the issue is whether a majority of the CIO may print the article complained of in the indictment or must go to the time, expense, and effort to form a new and different organization to print that article, in order that a minority, who have deliberately joined the CIO and who were assuredly aware of the political activities of the CIO at the time they paid their dues, may be absolved from co tributing to the

expenses of printing an article with which they do not agree.

The issue requires this Court to weigh the extent of the burden on the speech and press of the majority against the gain, both in money, and perhaps in effectiveness of speech; of the minority.

It is not, of course, necessary to urge that in weighing the burden to the speech and press of the majority there should be cast into the scale that diminution of the effectiveness of the majority's speech and press which would result from lack of that proportion of the minority's dues allocated to political speech and press of the organization. But Congress has not made a law prohibiting labor organizations to collect money for political, as opposed to economic, purposes except from those members who consent. Congress has prohibited all collection of money for that purpose by a labor organization and has made it necessary for the majority to form an independent entity to make a political speech in connection with a Federal election. That is a necessity which is an obvious burden on the speech and press of the majority. It does indeed impose on the majority of existing labor organizations a "previous restraint" more burdensome than those stricken down in *Grosjean* v. *American Press Co., Inc.*, 297 U. S. 233; *Near* v. *Minnesota*, 283 U. S. 697, and *Lovell* v. *Griffin*, 303 U. S. 444. Further it means that money of the majority already contributed deliberately to aid the organization to make political speech has been banned from such use, thereby making it even more burdensome for existing majorities of unions to speak than those which may arise in the future.

The gain to the minority is of lesser moment. To the extent that the minority's money, which is saved by allow-

ing the organization to pursue only economic ends, is not expended for speech or press, it cannot be entitled to equal weight with the additional money needed to be expended by the majority in creating and sustaining a separate organization to make political speeches. The First Amendment has given a preferred position to the rights therein guaranteed. *Thomas* v. *Collins*, 323 U. S. 516. "The circulation of information to which the public is entitled" may not be limited on solely economic grounds. *Grosjean* v. *American Press Co., Inc.*, 297 U. S. 233. Freedom of speech and press are "fundamental personal rights and liberties". *Schneider* v. *New Jersey*, 308 U. S. 147, 161. See also *Thornhill* v. *Alabama*, 310 U. S. 88, 101, 102; *Bridges* v. *California*, 314 U. S. [redacted], 262-3.

It is hardly to be assumed that all of the minority's saving will be expended on speech and press and for that reason it cannot be assumed that the effectiveness of the political voice of the minority is reduced because a part of their dues goes to sustain a contrary voice, in the same proportion as the effectiveness of the voice of the majority would be curtailed by a requirement that it create a separate organization to speak.

It must therefore be concluded that the interest of the majority in the CIO to avoid the burden placed upon it by the statute as a condition of printing the article in question outweighs any interest which the Government can assert on behalf of a minority in the CIO to save the amounts of their dues which have been allocated to the expenses of printing and publishing that article. The statute, as applied, must accordingly be held to be in conflict with the First Amendment.

POINT II

On its face the statute violates the First Amendment and is fatally indefinite in violation of the Fifth Amendment.

Even if we assume *arguendo* that Congress could prevent a labor organization from expending its funds to print or speak in favor of a candidate so as to protect a minority from having their money expended to facilitate that speech and press, the law which Congress has passed on its face violates the First Amendment. The law prohibits every labor organization even if all its members consider it desirable to combine to speak and print on behalf of political candidates, from such speaking and printing. It is not and cannot be urged that an organization in which all members are agreed may validly be barred from combining for both economic and political speech making activities.

Even on the assumption that the CIO contains a minority who do not wish to combine for political purposes, respondents may raise the objection that because the statute prohibits by its terms activities of others obviously protected by the First Amendment it is invalid on its face.

The reason that a person who has performed acts which might have been validly prohibited by a narrowly drawn statute may yet challenge the statute under which he is indicted because its terms permit the indictment of persons whose activities are protected by the First Amendment, is that the mere fact that the law remains on the books has a tendency to prevent persons from making such speeches and printing such articles as they have a right to do. The interest of society in encouraging such

speech and print is of such great moment that any person to whom the law is applied may attack its basic validity.

Thus the Court has time and again stricken down statutes "on their face" as violating the First Amendment without considering whether they have been invalidly applied. *Lovell* v. *Griffin*, 303 U. S. 444, 451; *DeYonge* v. *Oregon*, 299 U. S. 353, 364, 365; *Schneider* v. *New Jersey*, 308 U. S. 147, 162; *Thornhill* v. *Alabama*, 310 U. S. 88, 105. As stated in the last cited case the statute must be "narrowly drawn to cover the precise situation" to which the law may be validly applied. 310 U. S. at 105.

So in this case the CIO is entitled to assert the interest of those labor organizations all of whose members are in agreement to combine for political purposes. As applied to such organizations, and there is no doubt that the law does so apply, it is plainly invalid because they have no minority whose interest Congress can seek to protect. Under the decisions of this Court the law is thus invalid on its face under the First Amendment.

Further the statute violates the due process clause of the Fifth Amendment in that its terms are too vague and indefinite. The terms "in connection with any election" and "expenditures" are obviously uncertain in content, as the legislative history of the statute shows. 93 Cong. Rec. 6593-6595, 6604.

At least one purpose of requiring a statute to be precisely drawn in order to comply with the Fifth Amendment is so that its presence on the books may not have the effect of prohibiting conduct which the Courts hold is permissible under the statute itself. *Connally* v. *General Construction Co.*, 269 U. S. 385; *Lanzetta* v. *New Jersey*, 306 U. S. 451; *United States* v. *Cohen Grocery*, 255 U. S. 81.

Only if the statute is sufficiently clear so as not to cause a substantial class of persons to refrain from activities which the statute was not intended to prohibit can it be held valid, even though there may be "cases very near each other on opposite sides" of the precise line of illegality so that no one can come near to that line "without knowing that he does so, if he thinks." *United States* v. *Worzbach*, 280 U. S. 396, 399.

A determination of the validity of a statute when attacked as invalid under the Fifth Amendment because too vague requires an estimate of at least three considerations, the desirability of the conduct which the statute is intended to ban, the social value of the conduct which the presence of the statute on the books has the unintended effect of prohibiting, and the semantic difficulties of drawing a more definite law. For reasons above detailed if we assume *arguendo* that there is any desirability in prohibiting labor organizations from speaking and printing in favor of particular candidates for Federal elective office, that desirability is, to say the most, meager. On the other hand the language of the statute is naturally and reasonably construed on its face as prohibiting all speech on political matters relating to Federal elections, even though it is not speech in favor of one candidate, and as prohibiting even the sale to a third person of a union newspaper containing an article in favor of one candidate. The legislative history shows that it was not intended that such speech and print be banned. 93 Cong. Rec. 6436-6440. But the words of the statute appear to be applicable.

Not every citizen has the Congressional Record at hand. The inevitable tendency of the terms of the statute will be to restrain activities which the statute did not intend, and those activities are, to say the least, obviously vitally

important to the workings of a democracy. Cf. *Winters* v. *People of New York*, decided by this Court March 29, 1948.

The difficulty of framing a statute to cover those instances which Congress intended to cover is not great, certainly not insurmountable. On considering the conduct intended to be banned and that which is unintentionally restrained, it must therefore be concluded that the statute is too indefinite to withstand the test of due process under the Fifth Amendment.

The judgment should be affirmed.

Respectfully submitted,

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